

# INTERNATIONAL LEGAL PROTECTION OF JUVENILE VICTIMS (CHILD VICTIMS) FROM CRIME

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## Abstract

**Purpose:** The article considers legal issues relating to the international legal standards and principles for the protection of child victims from crime, the current problems of implementing these norms in the legislative process of modern Russia.

**Methodology:** In the process of writing the article, we actively used dialectical, comparative, formally logical, inductive and deductive methods.

**Result:** The policy provisions on the legal status of child victims of crime are enshrined in the international regulatory documents, on the basis of which different legal institutions of national criminal procedure law are formed. The states that recognize prescriptions of an international nature assume the obligation to legally certify such models of criminal proceedings, in which not only the rights of children recognized as victims would be ensured but the principles of the presumption of innocence, competition, humanity, justice, which are the most important legal guarantee of the rights of the accused, would be observed.

**Applications:** This research can be used for universities, teachers, and students.

**Novelty/Originality:** In this research, the model of the International legal protection of juvenile victims (child victims) from crime is presented in a comprehensive and complete manner.

**Keywords:** *child victims of crime, victim, criminal justice, "friendly" justice, security measures.*

## INTRODUCTION

The policy of transforming law enforcement, creating conditions for its focus on the protection of the rights and legitimate interests of persons affected by criminal encroachment is an essential component of the strategy of political and legal reforms conducted in the modern states.

The Criminal Procedure Code of the Russian Federation approved in Article 6 the appointment of criminal proceedings to protect victims as a priority task, which should be carried out at any stage of criminal proceedings. The Russian Federation actively implements international standards in national criminal and criminal procedural law, including with an aim of improving the human rights mechanism applicable to child victims of crime.

## METHODS

In the process of writing the article, we actively used dialectical, comparative, formally logical, inductive and deductive methods.

## RESULTS

1) we stated the main directions of implementation of the provisions of international regulatory legal acts (first of all, conventional ones) on the status of child victims; 2) we identified weaknesses in the legal regulation of issues relating to the status of minor victims in Russian criminal proceedings; 3) we established the role of international regulatory documents in the legal regulation of issues relating to the protection of children recognized as victims of crimes.

## DISCUSSION

In the XXI century, the Russian Federation entered the world legal space, taking a worthy place in it. This refers to the implementation by its legislation of relevant provisions of the international regulatory legal acts governing the protection of rights and the safety of victims of crime.

The Universal Declaration of the Human Rights of the UN General Assembly of 1948 contains a number of core directives that predetermine the victim's status: the right of a person to life, liberty, and personal integrity (Article 3) and the recognition of his/her legal personality (Article 6).

The International Covenant on Civil and Political Rights of 1966 establishes a provision relating to the child's rights, which can be projected onto the criminal justice field - every child, without any discrimination, has the right to such protection measures that are required in his/her position as a minor by his/her family, society and the state (Part 1 of Article 24).

A specialized act establishing the framework standards for the protection of the rights of the victims of crimes is the Declaration of Principles of Justice for the Victims of Crime and Abuse of Power dated 29.11.1985, which establishes the duty to facilitate judicial and administrative procedures that mostly respond to the needs of victims and minimize the deterioration of their comfort while ensuring protection and application of necessary security measures in case of a threat (clause d of Section A of Article 6).

The Declaration for the Victims of Crimes establishes a restitution rule that encourages the representatives of legal science throughout the world ([Junger-Tas, 2006](#)), as well as stipulates compensation for damage to the victim, regardless of the harm nature.

Consonant provisions are reflected in Recommendation No. R (85) 11 of the Committee of Ministers of the Council of Europe to the Member States "On the Victim's Position in the Framework of Criminal Law and Process" dated 26.06.1985, which establishes the main function of criminal justice - provision of the rights and legitimate interests of the victim (Preamble).

International regulations are important because they: 1) establish the framework standards and principles of legal regulation of such relations; 2) by virtue of direct action, fill in the gaps in the legal regulation of certain groups of legal relations of a protective nature; 3) serve as a guide for lawmaking; 4) by virtue of supremacy, they block the effect of law-restrictive norms; 5) assist the states in the formation of a unified legal order; 6) establish the child's age criterion (according to Article 1 of the Convention on the Rights of the Child dated 20.11.1989, every human being is a child up to the age of 18, if he/she does not reach adulthood earlier under the law); 7) establish a special procedure for criminal prosecution (excluding the contact of the child victim and the accused) and the criminal case trial.

The Russian Federation embodies the provisions of international regulations on the protection of the child victims of crime in the national traditions of legal regulation, financial and other possibilities for the full implementation of the rights granted. The Constitution of the Russian Federation dated 12.12.1993 establishes a provision for the protection of the rights of victims of abuse of power, access to justice, compensation for damage (Article 52), guarantees of qualified legal assistance (Part 1 of Article 48).

The definitive definition of the victim is given in Part 1 of Article 42 of the Criminal Procedure Code of the Russian Federation, according to which an individual is recognized a person, to whom physical, material, moral damage has been caused by a crime.

Supplements in Part 1 of Article 42 of the Criminal Procedure Code of the Russian Federation on clarifying the initial moment of issuing a decision on recognizing a person as a victim are important, as earlier before the adoption of the Law No. 432-FZ dated 28.12.2013 "On Amendments to Certain Legislative Acts of the Russian Federation in Order to Improve the Rights of Victims in the Criminal Proceedings", the factor was not clearly defined by law. Part 1 of Article 42 of the Criminal Procedure Code of the Russian Federation establishes: "the decision to recognize the victim as such as taken immediately from the moment of initiation of the criminal case and is made out by the decision of the inquirer, investigator, judge or a court ruling.

In the Resolution No. 17 dated 29.06.10 "On the Practice of Applying by the Courts the Rules Governing the Victim's Participation in the Criminal Proceedings", the Plenum of the Supreme Court of the Russian Federation established: a person who has suffered from a crime is recognized as a victim, regardless of his/her citizenship, age, physical or mental condition, and other information about his/her personality, as well as regardless of whether all persons involved in the commission of a crime have been identified (clause 2).

The Law No. 432-FZ has significantly strengthened the procedural guarantees of a minor participant in the criminal proceedings. The stories relate to the mandatory participation of a lawyer defending a victim who has not reached the age of 16, in respect of whom the crime against sexual integrity has been committed. The lawyer's participation is compensated at the expense of the state (clause 1.1 of Part 2 of Article 131 of the Criminal Procedure Code of the Russian Federation). This law also establishes other guarantees for the participation of a minor victim in the criminal proceedings: prohibition of data disclosure on the private life of a minor victim under the age of 14, without the consent of his/her legal representative (Part 3 of the Criminal Procedure Code of the Russian Federation); mandatory participation of a teacher or a psychologist in case of participation of a minor victim who has not attained the age of 16, reduction of the time for conducting an investigative action, depending on the victim's age (new edition of Part 1 of Article 191 of the Criminal Procedure Code of the Russian Federation).

The Convention on the Rights of the Child witnessed the provision that children have the right to special care and assistance and play the role of a legal compromise that smoothed over the contradictions of the liberalist and protectionist (custodial) doctrines of childhood victimization. A child has the right to claim special protection measures in any situation, and the state and the society shall provide this protection to him/her ([Archard, 2014](#)).

A landmark role in the transformation of national, including Russian, legislation on the protection of child victims of crime belongs to the following international regulatory acts of a specialized nature: 1) UN Resolution No. 2004/27 "On Guidelines on Justice for Child Victims and Witnesses of Crime" dated 21.06.2004 (hereinafter - the UN Resolution No. 2004/17); 2) guidelines on justice in matters related to the participation of child victims and witnesses of crime, adopted by

the Resolution 2005/20 at the 36th plenary meeting of the UN Economic and Social Council on July 22, 2005 (hereinafter - the Guidelines).

The UN Resolution No. 2004/17 recognizes every child as a unique and valuable person, whose individual dignity, special interests and private life should be recognized and protected (clause an of Article 8).

The guidelines for ensuring justice for child victims of crime determine the procedure for persons and bodies responsible for the welfare of children: implementation of intersectoral basic principles, dignity, non-discrimination, best interests of the child, protection, harmonious development, right to participate (Section III of Article 8).

Russia is included in the international legal order aimed at ensuring and guaranteeing the protection of fundamental human and civil rights and freedoms ([Grishyna, 2016](#)).

International norms establish general provisions, principles, standards, and guarantees for the provision of qualified legal assistance to all who need it. Article 6 of the Recommendation of the Committee of Ministers of the Council of Europe No. R (2006) 8 dated 14.06.2006 "On Assistance to the Victims of Crime" defines the rights of the victim of crime to receive information "about persons and bodies to whom they can apply for qualified legal assistance, legal aid which they can get".

Access to justice for the child victims of crime is provided within the framework of special (benign, stipulating additional legal and procedural guarantees) procedures. In order to properly ensure the rights of the child recognized as a victim in a criminal case, the person's age is certified. Establishing the victim's age, when it matters for a criminal case and when the documents confirming his/her age are not available or are in doubt, is the basis for the mandatory examination assignment (clause 5 of Article 166 of the Criminal Procedure Code of the Russian Federation).

The special regime of procedural actions with the participation of a minor victim includes the following additional rules: a) mandatory participation of a teacher or a psychologist during interrogation, confrontation, identification, and verification of testimony involving a minor victim who has not reached the age of sixteen or of that age, but suffering from mental illness or lagging in mental development; b) participation of a teacher or a psychologist in the conduct of investigative actions involving a minor who has reached the age of 16, at the investigator's discretion; c) reduced length of time for the production of investigative actions with the participation of a minor victim; d) granting the legal representative of a minor victim of the right to participate in the investigative actions; e) non-warning of the victim under the age of sixteen years of responsibility for refusing to give evidence and giving knowingly false testimony; e) mandatory use of video filming during investigative actions, with the participation of the minor victim, unless the minor victim or his/her legal representative objects to this; g) mandatory participation of a teacher or a psychologist during interrogation, confrontation, identification and verification of testimony with the participation of the minor victim who has not attained the age of sixteen years or has reached that age, but who has a mental disorder or is mentally retarded in criminal cases of crimes against sexual integrity of the minor; h) removal of the defendant from the courtroom, if the court conducts the interrogation of a minor (Articles 191 and 280 of the Criminal Procedure Code of the Russian Federation) ([Balla, 2012](#); [Eikel, 2012](#); [González, & Antúnez, 2016](#); [Courtney, 2018](#); [Shayakhmetova & Chaklikova, 2018](#); [Lobão, & Pereira, 2016](#); [Gamarra, Zurek, & San-Juan, 2018](#)).

Special rules of criminal proceedings involving child victims of sexual assault are guaranteed by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse dated 25.10.2007 (hereinafter - the Lanzarote Convention): child surveys shall be conducted by specially trained persons (clause c of Part 1 of Article 35); the number of such meetings should have been minimal (clause "e" of Part 1 of Article 35); the possibility of absentee hearing of the victim in a court and the use of video conferencing shall be discussed (clause "e" of Part 2 of Article 36), recording the victim's testimony on video and the possibility of using it as evidence in a criminal case (Part 2 of Article 35). This position is actively supported by Russian scientists ([Epikhin, & Zaytsev, 2018](#)).

Russia ratified the Lanzarote Convention on 07.05.2013 with some reservations. Immediately after the ratification, a number of amendments and additions to the Criminal Procedure Code of the Russian Federation followed: mandatory participation of a teacher or a psychologist, possibility of using telecommunications technologies in a court and using video recording of the interrogation of a minor victim in this category of cases, as well as announcement of the testimony of a minor victim (Part 6 of Article 281 of the Criminal Procedure Code).

A special component of the legal status of a child victim, requiring "parallel" regulation, is his/her safety. The safety issue in the criminal proceedings is considered as a certain state of protection of life, health, rights and legitimate interests of participants in the criminal proceedings, to which attention is paid of both Russian and foreign scientists ([Makeeva, Tasakov, Mishin, Sled, Epikhin, & Zeinalova, 2016](#); [Semrad, Vanags, & Bhullar, 2014](#)).

The Convention against Transnational Organized Crime adopted in New York on 15.11.2000 (hereinafter - the Convention against Organized Crime) contains a separate Article 25 "Assistance to Victims and Their Protection": each Member State shall take security measures in case of threats or intimidation of victims, as well as shall establish the legal means of obtaining compensation and indemnification for the victims of crime. Similar measures are stipulated in Art. 32 "Protection of Witnesses, Experts and Victims" of the UN Convention against Corruption dated 31.10.2003.

Measures to ensure the safety of the participant in the criminal proceedings, specified in Part 1 of Article 11 of the Criminal Procedure Code of the Russian Federation, developed on the basis of instructions and recommendations of the international regulatory legal acts, fully apply to a minor victim. At the same time, it should be recognized that the term “victim” is collective, personifying persons who have been harmed not only by crime but by the actions of a deranged person. It seems that for more precise regulation in the Russian legislation, it is advisable to use the definitions of the person affected and the victim.

## SUMMARY

- A) We believe that international law has developed a set of regulatory legal acts regulating the issues of legal protection of the child victims of crime.
- B) It is possible to assert with a certain degree of confidence that the international norms on the protection of the child victims of crimes with the supranational nature fulfill their purpose, acting as a guide (to action) for lawmaking activity, fill in the gaps of legal regulation due to their direct action, as well as block the use of domestic laws that unduly restrict the rights of child victims by virtue of their supremacy and preference in the situation of a conflict of the norms with national legislation.

## CONCLUSIONS

Thus, the supranational legal positions of international law provide a stable and consistent (with the doctrine of protection of individual rights) construction of domestic legal systems and, above all, criminal and criminal procedural law in the context of protecting the rights, legitimate interests and ensuring the safety of the child victims of crime.

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